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COMMENT.

Since our last issue, two decisions of great importance, each based on a different Act of Congress, but both tending in the same direction and springing from circumstances similar in general features, have been rendered by the United States courts. That of Judge Ricks of the Circuit Court, delivered in Ohio, was the result of a suit instituted by the Toledo, Ann Arbor & N. Mich. R. R. against the Lake Shore & Michigan Southern R. R. *et. al.*, to compel them to deliver to the complainant freight and cars, in transit from one State to another, and then on the defendant's line. The bill brought depended on the third section of the Interstate Commerce Act, which provides, that it shall be unlawful for "any common carrier, subject to this act * * * to subject any particular * * * company * * * to any undue * * * prejudice or disadvantage in any respect whatsoever." A mandatory injunction was therefore issued by Judge Ricks, at chambers, enjoining the defendant, "their officers, agents, servants, and employés," from so refusing to deliver any interstate freight billed over the complainant's road. The court holds, that "it had authority to thus proceed against the servants of the defendants," for since a corporation can only act through its agents, a mandatory law, like the Interstate Commerce Act, must apply to the servants as well as to the corporation itself. Besides, the defendant's refusal to deliver the said freight, etc., was due to their employés, who had declined to handle it, on account of a boycott which their labor organization had declared against the complainant, to assist the complainant's workmen, then out on a strike. The mandates of the court were duly served on the defendants and were by them communicated to their employés, certain of whom, remaining in the defendant's service deliberately disobeyed them and were, on application from the defendants, attached to answer for contempt by order of the court. It was claimed that such an order was without precedent, but on this point the court says, "Every just order or rule known to Equity Courts was born of some emergency to meet some new conditions and was therefore in its time, without a precedent. If based on sound principles and beneficent results follow their enforcement, affording necessary relief to the one party without imposing illegal burdens

on the other, new remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief." It was in consideration of the question as to the guilt of the men however, that the more striking points of the opinion appear.

The court holds, that under ordinary conditions the right of the employé to quit his employer's service cannot be restrained by a Court of Equity and that the employer's sole remedy is a suit for damages, but that this right is modified where the employer is a public corporation charged with public trusts. "The suspension of work on the line of such a vast railroad, by the arbitrary action of the body of its engineers and firemen would paralyze the business of the entire country, entailing losses and bringing disaster to thousands of unoffending citizens." In this particular case the employés knew that their refusal would not only result in this calamity to the public but would cause their employer to violate the orders of the court and thus render himself liable to heavy penalties. They therefore owed the corporation "a higher duty than though their services had been to a private person," and an attempt to make such a combined action in aid of striking workmen on another road, without any grievance of their own, might be restrained by the courts, as might any "acts, or commission of violence, or intimidation, or the enforcement of rules and regulations of organizations, which result in irremediable injuries to their employers and to the public."

But while the court thus emphatically asserts its right to compel an employé while in such service to perform the duties of his position, it disclaims any power to force an individual to remain in the employment, when he honestly desires to leave it, adding, "the circumstances when this freedom to quit the service continues, and when it terminates, it is not now necessary to determine, but there certainly are times and conditions when such right must be denied." It is certain, however, that a combination to leave in order to injure the public and so oppress the employer is criminal, and a Court of Equity may protect the public and employer by preventing "an employé from quitting the service in which he is engaged, solely as a means of carrying out his part in such conspiracy and for no other purpose than to aid in enforcing such a boycott."

The second decision referred to, is that rendered by Judge Billings of the Circuit Court for the Eastern District of Louisiana, (*The U. S. v. The Workingmen's Amalgamated Council of New*

Orleans, La., et al., No. 12,143). This also was the result of an application for an injunction to prevent the carrying out of a boycott, but the statute relied on in this case is found in United States Statutes, Vol. 26, p. 209, and is entitled "an act to protect trade and commerce against unlawful restraints and monopolies." The first section provides, that "every contract or combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared illegal." This act has usually been regarded as having been passed to prevent combinations of capitalists, not of laborers; and on this point Judge Billings, in the course of his decision, says, "it seems to me, its meaning as far as relates to the sort of combinations to which it is to apply is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers." The circumstances which led to the application for the injunction were these. A dispute had arisen between the warehousemen, and draymen and their employés, and a general strike was ordered by the heads of the labor organizations to compel the employers to accede to the wishes of the workmen, while non-union men were prevented by intimidation from taking the striker's places. This resulted in a cessation of traffic and a consequent stoppage of freight in progress "from State to State, and to and from foreign nations." The court holds, that such a combination to control the employment of none but union men when interstate or foreign commerce is restrained thereby, is such a conspiracy or combination as is included by the statute. Labor organizations may be in themselves lawful but when they are used for an unlawful purpose they become themselves unlawful and may be restrained. "The evil as well as the unlawfulness of the act of the defendants consists in this, that until certain demands of theirs were complied with, they endeavored to prevent and did prevent everybody from moving the commerce of the country. * * * It is the successful effort of the combination of the defendants to overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute. * * * For these reasons I think the injunction should issue." It will be noticed that the results of this decision may be even more far-reaching in its consequences than that of Judge Ricks, and the question as to what constitutes "a restraint of trade," under the statute, is liable to become one as full of difficulty for the courts as its correct decision will be of importance to the community.

A recent Virginia case (*City of Norfolk v. Chamberlain*, 16 S. E. Rep. 730) brings up the very interesting question as to how far a municipality may go in making improvements, such as sidewalks and sewers, and compel the owners of property abutting on the improved streets to pay for them. In this case the city council of Norfolk took by condemnation proceedings almost half of a vacant corner lot in order to widen one of the streets. The remaining part was practically valueless, being a very narrow strip along the newly widened street the entire depth of the original lot. The city council next voted to build a sewer through this street, and assessed the narrow strip for betterments considerably more than was paid for the part taken under the condemnation proceedings. An injunction restrained the collection of the assessment and the Supreme Court made the injunction perpetual.

The general doctrine is that where needed improvements are made the owners of property specially benefited should bear a greater proportion of the expense than the general tax-payer. This doctrine, however, is rather flexible as applied in the several States. New York takes the strongest ground in favor of local assessments in the early and now leading case of *People v. Mayor of Brooklyn*, 4 N. Y. 419, which seems to be based upon the idea that the legislature is possessed of inherent and absolute power over the subject of taxation, and may therefore arbitrarily distribute the burdens of taxation, or authorize municipal corporations to do so. This strong ground is denied in Illinois (*Chicago v. Larned*, 34 Ill. 203, and *Ottawa v. Spencer*, 40 Ill. 211), but it is conceded that assessments may be made for actual benefits, the balance to be paid by general taxation. Pennsylvania takes practically the same ground in *Hammett v. Philadelphia*, 65 Pa. St. 146, the *Case of Washington Avenue*, 69 Pa. St. 352, and *Seely v. Pittsburgh*, 82 Pa. St. 360.

In *McBean v. Chandler*, 9 Heisk. 349, the Supreme Court of Tennessee approved the Illinois decisions and held that it is beyond the power of the legislature to authorize a municipality to pave its streets and charge the cost thereof on the adjoining lots in proportion to their frontage. And even in New York in the later case of *Guest v. Brooklyn*, 69 N. Y. 506, the system as authorized and practiced in New York and Brooklyn is condemned as "unjust and oppressive, unsound in principle, and vicious in practice."

The Virginia case, *supra*, in a very elaborate opinion discussing the whole system of local assessments, declares the doctrine to be untenable and the principle unsound, capable of being made

the means of indirect confiscation of property without compensation, and, in fact, often so used by over-zealous or unscrupulous city councils.

* * *

In the case of *Matthews et al. v. Dubuque Mattress Co. et al.*, reported in 54 N. W. Rep. 225, the Supreme Court of Iowa has rendered a decision upon a very close question. The original action was upon a promissory note which read, "We promise to pay," etc., and was signed "Dubuque Mattress Co., John Kapp, Pt." The lower court held that the note was binding upon Kapp personally and that even between the original parties parol evidence was not admissible to show that the plaintiff took the note as the obligation of the corporation. The higher court, following former decisions, affirmed this ruling. Two of the justices, however, dissented, contending that the preponderance of authority was in favor of the admissibility of parol evidence, in an action between the original parties to a bill or note of this character, to show that both parties to the instrument intended it to be the obligation of the corporation. There certainly was enough upon the face of the note to make it doubtful whether it was intended as a personal or a corporate note. This being true there would seem to be good reason for admitting parol evidence as to its true character, especially in a suit between the maker and the payee. This is the view taken by a large number of authorities. Some of the cases go even further and hold that a note like the one upon which the Iowa case was brought is not doubtful on its face but is the obligation of the corporation alone. The point involved is one upon which the decisions are so decidedly conflicting that it would be useless to endeavor to reconcile them. What one court would call mere *descriptio personæ*, is enough to cause another court to admit parol evidence to remove a patent ambiguity. Plain proof — if proof were needed — that different judges see the same thing in different lights, and that upon some points the decisions of our courts can never be wholly consistent.

* * *

The case of *State v. Croteau*, 23 Vt. 14, so often quoted and criticised as authority for the doctrine that jurors in criminal cases are paramount judges of the law as well as of the facts, has at last been expressly overruled. Thus disappears as a right of common law a doctrine originally adopted in the colonies as a safeguard against the arbitrary acts of judges appointed by the English Crown, and which has gradually been abandoned, since

our independence was gained and the reason for the rule disappeared. It remains the law, however, in five or six American States, under stress of constitutional or legislative provisions. The overruling opinion (*State v. Burpee*, 25 Atl. Rep. 964) after an exhaustive review of the English and American authorities sums up as follows: "We are thus led to the conclusion that the doctrine that jurors are the judges of the law in criminal cases is untenable; that it is contrary to the fundamental maxims of the common law from which it is claimed to take its origin; contrary to the uniform practice and decisions of the courts of Great Britain, where our jury system had its beginning, and where it matured; contrary to the great weight of authority in this country; contrary to the spirit and meaning of the Constitution of the United States; repugnant to the constitution" and statutes of the State of Vermont, and, quoting from another opinion, "contrary to reason and fitness in withdrawing the interpretation of the laws from those who make it the business and the study of their lives to understand them, and committing it to a class of men who, being drawn from non-professional life for occasional and temporary service only, possess no such qualification, and whose decision would be certain to be conflicting in all doubtful cases, and would therefore lead to endless confusion and perpetual uncertainty."

* * *

In an opinion on the appeal of Sidney Lascelles the Supreme Court of the United States has just decided that a prisoner extradited from another State may be tried for a crime not mentioned in the requisition papers. This has long been a mooted question and there have been decisions on both sides in the State courts, the most recent of which were noticed in the last number of this JOURNAL, page 164. This is the first time that the question has come before the United States Supreme Court, and its decision will probably go far toward settling the rule, especially as it would seem to be supported by the weight of reason and authority.